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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DONALD WASHINGTON, Defendant and Appellant.	B287243 (Los Angeles County Super. Ct. No. ZM019407)

APPEAL from a judgment of the Superior Court of Los Angeles County. James R. Dabney, Judge. Affirmed.

Lori E. Kantor, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Kristen J. Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

Following a bench trial the superior court found Donald Washington to be a sexually violent predator (SVP) under the Sexually Violent Predators Act (the SVPA or the Act). (Welf. & Inst. Code,[1] § 6600 et seq.) Washington appeals, contending the commitment order must be reversed because the evidence was insufficient to support the court's finding that he is likely to engage in sexually violent predatory criminal behavior if released from custody. We disagree and affirm.

PROCEDURAL HISTORY

On June 25, 2012, the People filed a petition to commit appellant as a sexually violent predator under the SVPA. The superior court found probable cause to hold appellant over for trial pursuant to section 6602, and ordered appellant to remain in custody in a secure facility pending trial. Appellant waived a jury, and a bench trial commenced on October 25, 2017. On December 18, 2017, the trial court found beyond a reasonable doubt that appellant meets the criteria for commitment as an SVP and ordered appellant committed to the California Department of State Hospitals (DSH) for an indeterminate term pursuant to section 6604.

FACTUAL BACKGROUND

A. *Appellant's qualifying offenses*

In 1988 appellant suffered four convictions for qualifying sexually violent offenses arising out of two separate incidents. In both incidents, appellant entered the homes of his two victims while they were sleeping. After blindfolding, restraining and

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

threatening them, he raped and sodomized the women. When he left he stole several items of value including the victims' cars.

B. *Expert testimony*

1. The People's experts

Douglas Korpi, Ph.D., a contracted SVP evaluator for the DSH, was assigned to interview appellant and assess whether he qualified as an SVP. Dr. Korpi interviewed appellant in April 2012 and November 2013. In January 2015, February 2016, and March 2017 appellant declined further interviews, and Dr. Korpi prepared updated SVP evaluation reports for those years based on the written records without interviewing appellant. In preparing his evaluations of appellant, Dr. Korpi reviewed documentation regarding appellant's history of sexual offenses, his notes of the 2012 and 2013 interviews with appellant, and his notes regarding his attempt to interview appellant in 2016. Dr. Korpi also reviewed the Coalinga medical files and Coalinga Police Department records for his assessments.

In January 2017 Michelle Vorwerk, Psy.D., a forensic psychologist and SVP evaluator under contract with the DSH, was assigned to interview and evaluate appellant to determine whether he qualified as an SVP. In the course of her evaluation, Dr. Vorwerk reviewed appellant's mental health records from the DSH and Coalinga State Hospital, which included psychiatrist notes, interdisciplinary notes, social worker notes, rehabilitation therapist notes, and medication logs. Dr. Vorwerk also reviewed Dr. Korpi's evaluation reports pertaining to appellant, police reports concerning the 1987 qualifying offenses, and the Department of Corrections and Rehabilitation records regarding prison rules violations. On February 13, 2017, appellant declined an interview with Dr. Vorwerk, stating that "it was illegal and

unfair that he was being confined at the state hospital, that he essentially had been cured of the rape demon by Jesus Christ and did not want to meet with [Dr. Vorwerk]." Dr. Vorwerk had no other communication with appellant.

2. Dr. Korpi's interviews of appellant

Appellant was a healthy and reasonably fit 55-year-old when Dr. Korpi interviewed him on April 24, 2012. Appellant reported that he has never been married, but had had "20 different girlfriends or one-night stands, and then was with a good 35 other women, all prostitutes." Appellant told Dr. Korpi he began exhibiting himself when he was in high school and publicly masturbated in prison. He stated that he had exhibited himself on hundreds of occasions, but had been written up only a few times because " '[he] was so good.' " He was last written up for exhibiting himself in 2009 and told Dr. Korpi that although he could still get away with it, he no longer does it for fear of " 'get[ting] struck out' " and because he had found Jesus Christ.

Appellant told Dr. Korpi "he had a problem related to 'licking women.' " He admitted that between 1974 and 1987 he had raped up to 61 women, and he had licked 40 of them. After "each and every rape he would 'feel sorrow' and commit himself to never doing such a thing again." But he admitted that the sorrow wore off and he would always go out and rape again. Appellant stated "somewhat proudly" that although he always carried a gun, knife, or some other weapon, he never used it. Appellant admitted all the various rape allegations that appeared in his criminal history, including two for which he was arrested but not convicted. He explained that he was acquitted of a 1979 rape because the jury found him more believable than the victim, and he was not prosecuted for another rape in 1981 because the

victim had taken a bath afterwards and there was insufficient evidence.

In the interview on November 1, 2013, appellant told Dr. Korpi he had been raped in 2009 while he was in prison. During the rape appellant thought he might die, and the experience made him realize the terror his victims must have felt when he raped them. Believing that no one should go through that type of terror, appellant was determined not to rape again in the future. Appellant also told Dr. Korpi that everything changed in 2009 when "he took Jesus Christ into his life," and he became "a changed man." He averred that he needs no help or sex-specific treatment, he does not fear reoffense, and "he is absolutely certain that, once released to the community, he will be safe." He stated he was ashamed of having been a sex offender and what he has done. He told the doctor he does not have the urge to rape and does not feel like a rapist anymore. He is "blessed that he has accepted the Lord into his life, and blessed with a freedom from sexual compulsion."

Appellant has a significant history of substance abuse, beginning at age 10 with glue and moving on to alcohol, marijuana, cocaine, and methamphetamine. He used cocaine and methamphetamine intravenously, and committed most of his rapes when he was using "one form of an upper or another." Appellant continued to use methamphetamine even in prison and said he last got high on " 'crank' " in 2009. He stated that if he uses methamphetamine or cocaine in the community, "all bets are off," and he would likely commit another offense.

Appellant told Dr. Korpi that in 1982 he falsely told the prison staff he was hearing voices in order to get some medication to help him " 'do the time.' " He was prescribed Mellaril.

Appellant also claimed he " 'did a good job' " when he made a suicide gesture in 1988 so he could "get off the [prison] yard."

As he declined another interview with Dr. Korpi in 2016, appellant angrily declared, " 'And they wonder why I'm doing drugs. I've been doing drugs since I've been here.' "

3. The experts' opinions

Both Drs. Korpi and Vorwerk opined that appellant currently suffers from multiple diagnosable mental disorders that predispose him to commit criminal sexual acts: other specified paraphilic disorder (OSPD), nonconsent or coercive type; exhibitionist disorder in remission; antisocial personality disorder; moderate to severe stimulant use disorder; and at least moderate alcohol abuse disorder, possibly in partial remission. Dr. Vorwerk explained that "[o]ther specified paraphilic disorder nonconsent is the intense and recurrent sexual arousal to having sex with nonconsenting persons." According to Dr. Korpi, in appellant's case, OSPD, coercive type "basically means [appellant is] interested in raping women." Based on the OSPD diagnosis, Dr. Vorwerk concluded that appellant presented a serious and well-founded risk of engaging in sexually violent predatory criminal behavior.

Dr. Korpi based his OSPD diagnosis primarily on the facts of appellant's predicate offenses and statements by appellant in his 2012 and 2013 interviews. In particular, both victims were complete strangers and these were quite clearly forcible rapes; appellant was "quite active in his sexual violence," spending a considerable amount of time committing multiple sex offenses against these women, which indicated appellant was really "committed" and "dedicated to the rape task"; appellant did not regard the rapes he committed as a problem, but rather, thought

his problem was licking women on the vagina; appellant committed multiple rapes even though he felt "sorrowful" after each one; appellant admitted that between 1974 and 1987 he licked 40 women and raped 60 or 61 women; and finally, appellant admitted that although he was not convicted on charges of aggravated rape in 1979 and 1981, he had in fact raped both victims.

Both experts opined that, although appellant's age (61) could be a significant protective factor which would reduce the likelihood of reoffending nearly to zero in the ordinary case, appellant's ongoing drug abuse while in the hospital presented a serious risk that he would reoffend.

Dr. Vorwerk concluded that the likelihood that appellant would engage in sexually violent predatory criminal behavior as a result of his diagnosed mental disorder is "a serious and well-founded risk." Dr. Vorwerk based her opinion on the following data points: (1) appellant's OSPD diagnosis; (2) his volitional impairment; (3) the fact that he was undeterred by his multiple arrests and prior rape trial; (4) documented inappropriate conduct with a staff member at Coalinga State Hospital in 2014, which showed ongoing sexual aggression and sexual proccupation; (5) appellant's failure to participate in any sex offender treatment; (6) his lack of insight into his problems; and (7) his ongoing substance abuse.

Dr. Vorwerk then summarized her findings: "Lastly, I just want to say that the man that I evaluated earlier this year has really remained unchanged since 1987. There's nothing about his risk that has changed aside from him aging about 30 years. [¶] He's still not following the rules at Coalinga. He is still antisocial in his behavior. He's still sexually inappropriate with staff

members on a regular basis. He's still not interested in treatment. He's still using drugs and still not taking responsibility for his crime. [¶] So over time, sometimes we will see somebody who is a different person, who has made changes, and I found no evidence of anything being different in terms of his risk to commit more sexual offenses, and that is why I found him presently to be a serious and well-founded risk."

Dr. Korpi expressed the same opinion, citing numerous factors which indicate appellant is likely to engage in sexually violent predatory criminal behavior despite his relatively advanced age: (1) he began committing sexual offenses in high school and continued through his incarceration and hospitalization; (2) he has been diagnosed with two distinct sexual disorders, exhibitionism and the rape disorder; (3) his victims are strangers; (4) he has no history of long-term relationships in which to have sex legally and in a loving relationship; (5) he has numerous arrests for sexual misconduct; (6) the nature of appellant's sexual offenses was not minor and exhibited "a sexualized violence" in blindfolding, gagging, and threatening to kill his victims; (7) his diagnosis of antisocial personality disorder increases his risk for reoffending "significantly"; (8) appellant scored 30 on the Hare Psychopathy Checklist, "which puts him right at the edge of being a psychopath"; (9) in addition to his arrests for sexual misconduct, appellant also has prior arrests for non-sexual offenses; (10) he

has a poor work history;[2] (11) he comes from a broken family; and (12) appellant received multiple parole violations and rules violations while he was in custody. In short, Dr. Korpi concluded that appellant "has so many risk factors that elevate his risk that this is clearly a risky case."

C. *Exhibits*

The court admitted into evidence and considered a limited number of exhibits in making its SVP determination: a redacted copy of the certified Penal Code section 969b priors packet (People's exhibit 3A); a redacted abstract of judgment in Los Angeles Superior Court case No. A959410 (appellant's qualifying offenses; People's exhibit 4A); a redacted copy of the probation report in Los Angeles Superior Court case No. A959410 (People's exhibit 6A); a police report dated September 24, 1987 (People's exhibit 7); a police report dated September 25, 1987 (People's exhibit 8); Dr. Korpi's redacted May 7, 2012 Welfare and Institutions Code section 6600 Evaluation Report (People's exhibit 10E1); Dr. Korpi's redacted November 3, 2013 Welfare and Institutions Code section 6600 Evaluation Update Report (People's exhibit 10D1); and a certified copy of appellant's CLETS printout as of February 26, 2016 (People's exhibit 12).

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[2] Appellant told Dr. Korpi in his 2012 interview that he "supported himself chiefly through burglaries, explaining that 'That was my job.' "

DISCUSSION

I. Relevant Law

A. *The SVPA*

The SVPA allows for the involuntary civil commitment of certain offenders following the completion of their prison terms who are found to be sexually violent predators. (*People v. Roberge* (2003) 29 Cal.4th 979, 984 (*Roberge*).) "Although the SVPA is a civil proceeding, its procedures have many of the trappings of a criminal proceeding . . . with consequences comparable to a criminal conviction—involuntary commitment, often for an indefinite or renewable period." (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1192.) An alleged SVP is entitled to a trial before the court or a jury, at which the People must prove three elements beyond a reasonable doubt: (1) the person has suffered a conviction of at least one qualifying "sexually violent offense" (referred to as a qualifying or predicate offense), (2) the person has " 'a diagnosed mental disorder that makes the person a danger to the health and safety of others,' " and (3) the mental disorder makes it likely the person will engage in future predatory acts of sexually violent criminal behavior if released from custody. (§§ 6600, 6603, 6604; *People v. Shazier* (2014) 60 Cal.4th 109, 126; *People v. McKee* (2010) 47 Cal.4th 1172, 1186.)

The first element—one or more convictions for a sexually violent offense—"refers to certain enumerated sex crimes 'committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.' " (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1145, quoting Welf. & Inst. Code, § 6600, subd. (b).) Proof of the existence and details underlying the commission of the predicate offense(s) is accomplished "by introducing 'documentary evidence,

including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals' " as well as "by the introduction of a [Penal Code] 'section 969b prison packet.' "[3] (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 403.)

The Act defines the diagnosed mental disorder required for the second element as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." (§ 6600, subd. (c); *Roa*, *supra*, 11 Cal.App.5th at p. 444.) Specifically, " '[d]anger to the health and safety of others' does not require proof of a recent overt act while the offender is in custody." (§ 6600, subd. (d); *People v. McCloud* (2013) 213 Cal.App.4th 1076, 1090.) To establish this element, the People will have one or more experts evaluate the person, review documentary evidence (such as state hospital records, police and probation reports, and prison records), and render a diagnosis. (§ 6603, subd. (c)(1); *Roa*, *supra*, at pp. 444–445.) This process may be repeated multiple times over several years in order to satisfy the requirement that, at the time of trial, the person has "a currently diagnosed mental disorder." (§ 6600, subd. (a)(3); see

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[3] Penal Code section 969b "allows the admission into evidence of records or certified copies of records 'of any state penitentiary, reformatory, county jail, city jail, or federal penitentiary in which' the defendant has been imprisoned to prove that a person has been convicted of a crime," including a sexually violent offense. (*People v. Roa* (2017) 11 Cal.App.5th 428, 444 (*Roa*).)

People v. Landau (2013) 214 Cal.App.4th 1, 26 [an SVP case "requires a *current* mental condition"].)

To prove the third element, the People must show that if released, the alleged SVP will likely engage in sexually violent criminal behavior due to the diagnosed mental disorder. (§ 6600, subd. (a)(3); *People v. Shazier*, *supra*, 60 Cal.4th at p. 126.) The Act requires proof of a clear link between the second and third elements; that is, the finding of future dangerousness must be shown to derive from "a currently diagnosed mental disorder characterized by the inability to control dangerous sexual behavior." (*Hubbart v. Superior Court*, *supra*, 19 Cal.4th at p. 1158; *People v. White* (2016) 3 Cal.App.5th 433, 448.) Again, in the SVP trial the People will present expert testimony—usually based on diagnostic tools that predict future violent sexual behavior—to establish the alleged SVP's dangerousness and likelihood to reoffend. (*Roa*, *supra*, 11 Cal.App.5th at p. 445.) In addition, "[e]vidence of the person's amenability to voluntary treatment, if any is presented, is relevant to the ultimate determination whether the person is likely to engage in sexually violent predatory crimes if released from custody." (*Roberge*, *supra*, 29 Cal.4th at p. 988, fn. 2; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 256.)

In this case it is the third element for which appellant claims there was insufficient evidence to support the trial court's SVP finding.

B. *Sufficiency of the evidence*

" 'In reviewing the evidence sufficient to support a commitment under [the SVPA], "courts apply the same test as for reviewing the sufficiency of the evidence to support a criminal conviction." ' [Citation.] 'Thus, this court must review the entire

record in the light most favorable to the judgment to determine whether substantial evidence supports the determination below. [Citation.] To be substantial, the evidence must be " 'of ponderable legal significance . . . reasonable in nature, credible and of solid value.' " ' " (*People v. McCloud*, *supra*, 213 Cal.App.4th at p. 1088.) We draw all reasonable inferences in favor of the trial court's judgment, and we neither determine the credibility of witnesses nor reweigh any of the evidence. (*People v. Fulcher* (2006) 136 Cal.App.4th 41, 52.) Indeed, "it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends." (*People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Poulsom* (2013) 213 Cal.App.4th 501, 518.) This applies with equal force to the opinions of expert witnesses. (*Poulsom*, at p. 518; *People v. Poe* (1999) 74 Cal.App.4th 826, 831 ["It is not the role of this court to redetermine the credibility of experts or to reweigh the relative strength of their conclusions"].)

II. Sufficient Evidence Supports Appellant's Commitment as an SVP

A. *The trial court's decision*

Following argument by counsel, the court summarized the issue before it: "[t]he bottom line" is "whether [appellant is] able to control the underlying mental illness, his conduct, that was manifested in the commission of these underlying crimes and whether he's likely to continue that kind of behavior now that he's 61." The court analyzed the evidence and concluded: "[O]n balance, based on testimony that I heard from the experts and not having any countervailing evidence on the other side, based on what was presented to me for me to evaluate what they relied

on, I do believe that the People have sustained the petition beyond a reasonable doubt that Mr. Washington is a sexually violent predator and that by reason of mental disorder, he's a danger to the health and safety of others and as a result, he's likely to engage in acts of predatory sexual violence upon release from custody. [¶] I think this is far from a clear-cut, slam dunk, but I think on balance in the light of everything that was presented, the People have sustained their burden."

B. *The trial court's determination that appellant qualifies as a sexually violent predator is supported by substantial evidence*

Appellant contends that, based on appellant's age of 61 at trial and his history while in custody, the evidence was insufficient to support the trial court's determination based on the experts' opinions that appellant presents a substantial danger and serious and well-founded risk of committing sexually violent crimes if released from custody. In so arguing, appellant points to evidence before the court that might support a finding that appellant is unlikely to reoffend. But appellant's argument simply urges us to reweigh the evidence in his favor, which an appellate court may not do. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206 [" 'Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends' "].) Rather, we are required to draw all reasonable inferences in favor of the trial court's judgment (*People v. Poulsom*, *supra*, 213 Cal.App.4th at p. 518), and " 'if the circumstances reasonably justify the [trier of fact's] findings, the judgment may not be reversed simply because the

circumstances might also reasonably be reconciled with a contrary finding.' " (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 162.)

Contrary to appellant's assertion, the record is replete with substantial evidence supporting the trial court's conclusion that appellant lacks sufficient volitional control over his behavior such that reoffense is likely if he is released. That evidence consists of the exhibits admitted at trial, the witnesses' testimony, and the experts' opinions, which in turn were based on appellant's own statements, standard psychological testing and analysis, and a comprehensive assessment of appellant's dynamic risk factors.

Both experts took appellant's age into account, but both concluded that appellant's behavior and risk factors outweighed the protective factor of appellant's age. Drs. Korpi and Vorwerk also concluded that appellant lacks volitional control, citing, among other things, his broken vows to stop raping women, his ongoing substance abuse, and his continued refusal to seek treatment. In particular, Dr. Vorwerk observed that appellant was not enrolled in and had expressed no interest or intention of participating in any sex offender treatment program, claiming "he was cured, that he was not an SVP anymore, that the rape demon was taken out of him by Jesus Christ." However, amenability to voluntary treatment if released is a relevant consideration in determining whether a person is likely to reoffend by committing sexually violent predatory acts. (*Roberge*, *supra*, 29 Cal.4th at p. 988, fn. 2; see also *Cooley v. Superior Court*, *supra*, 29 Cal.4th at p. 256.)

Finally, appellant maintains that Dr. Korpi improperly considered appellant's prior conduct 30 years earlier in determining the likelihood that appellant would reoffend. He

asserts that the passage of time and intervening events can result in changed behaviors as indicated by evidence that appellant had stopped exhibiting himself in 2009. But "criminal and psychosexual history" is a risk factor for reoffense which *must* be considered in an SVP evaluation. (§ 6601, subd. (c) ["Risk factors to be considered shall include criminal and psychosexual history"].) And this factor was clearly relevant to the experts' assessments of appellant's risk in this case: Appellant asserted in 2012 and 2013 he did not feel the urge to rape anymore because he felt sorrowful and "bad," and he had found Jesus Christ. But he admitted to having the same feelings when he was committing rapes, and yet he persisted in committing this crime. Further, appellant's claimed spiritual awakening had no bearing on Dr. Korpi's opinion because appellant has "always been a religious guy."

In sum, we find no merit to appellant's substantial evidence challenge to the superior court's determination that he qualifies as a sexually violent predator under the SVPA.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.